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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 06, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROMAN S. DE'LA CRUZ, also known as
DALE LEWIS OKERT,

No. 2:23-CV-00116-SAB

Plaintiff,

v.

ORDER DISMISSING CASE

SPOKANE COUNTY, a municipal
corporation and official capacity; PAUL C.
WANZANREID, individual capacity;
RICHARD M. LELAND, individual
capacity; and ALICIA BELL, individual
capacity,

Defendants.

Before the Court are Plaintiff's Motions for Entry of Default, ECF No. 7 and 8, and Defendants' Motions to Dismiss, ECF Nos. 10 and 18. The motions were considered without oral argument. Plaintiff is representing himself. Defendants are represented by F. Dayle Andersen, Jr. and Stephen W. Garvin.

Background

Plaintiff Roman S. De'La Cruz brings numerous claims against Defendants for violations of the United States Constitution and federal statutes. On January 5, 2018, Plaintiff claims Defendant Paul C. Wanzanreid stopped his vehicle for alleged speeding and driving under the influence. Plaintiff states he was unlawfully

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1 detained when he refused to consent to a search of himself and his vehicle. It
 2 appears Plaintiff was subsequently prosecuted for speeding and driving under the
 3 influence. Defendant Alicia Bell appears to be the prosecuting attorney.

4 Plaintiff asserts the presiding judge in the case, Defendant Richard M.
 5 Leland, is liable because “[t]here was a period between 2019–2020[] where the
 6 official bonds had lapsed and judges continued to make legal determinations.”
 7 Plaintiff also claims Defendant Spokane County exercises an unconstitutional
 8 practice of “policing for profit” and fails to maintain accurate maintenance records
 9 of its breathalyzer machines.

10 **Discussion**

11 Defendants move to dismiss the above-captioned case because Plaintiff did
 12 not effectuate service and Plaintiff’s Complaint fails to state a claim upon which
 13 relief can be granted. Defendants argue Plaintiff’s claims are barred by the statute
 14 of limitations and judicial and prosecutorial immunity. Conversely, Plaintiff moves
 15 for entry of default judgment, claiming Defendants failed to file a timely
 16 responsive pleading.

17 **1. Service and Default Judgment**

18 Federal Rules of Civil Procedure 4(c) and (m) provide that a summons must
 19 be served with a copy of the complaint within 90 days after the complaint is filed.
 20 A court must dismiss an action against the defendant if service is not made within
 21 this period, unless good cause is shown for the failure to timely serve. Fed. R. Civ.
 22 P. 4(m). Rule 4(c)(2) provides that service must be made by any person “not a
 23 party.” Defendants must be served in accordance with the Federal Rules of Civil
 24 Procedure, or the court lacks personal jurisdiction. *Jackson v. Hayakawa*, 682 F.2d
 25 1344, 1347 (9th Cir. 1982) (citation omitted).

26 This action was filed on April 27, 2023, and a summons was returned
 27 executed on May 4, 2023. The filing indicated Plaintiff would move for service of
 28 process by publication, but no motion or related pleadings were filed. Plaintiff

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1 claims Defendants were served by mail because he personally mailed the summons
 2 and complaint to Defendants' last known addresses.

3 Rule 4(c)(2) prohibits Plaintiff, as a party to this action, from serving
 4 Defendants, by mail or otherwise. Plaintiff also did not serve Defendants through
 5 other valid means. Therefore, the Court lacks personal jurisdiction over Defendants
 6 and Plaintiff's motion for entry of default judgment is improper.

7 **2. Failure to State a Claim**

8 Under Rule 12(b)(6), the Court must dismiss a complaint that fails "to state a
 9 claim upon which relief can be granted." The complaint must provide "sufficient
 10 factual matter, accepted as true, to 'state a claim to relief that is plausible on its
 11 face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v.*
 12 *Twombly*, 550 U.S. 544, 570 (1955)). A claim is plausible on its face when "the
 13 plaintiff pleads factual content that allows the court to draw the reasonable
 14 inference that the defendant is liable for the misconduct alleged." *Id.* The Court
 15 accepts all material allegations as true and construes the facts in the light most
 16 favorable to the plaintiff, but it need not accept conclusory allegations. *In re Gilead*
 17 *Scis. Sec. Litig.*, 536 F.3d 1049, 1054 (9th Cir. 2008); *Wyler Summit P'Ship v.*
 18 *Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998).

19 For the following reasons, Plaintiff's Complaint does not state a claim upon
 20 which relief can be granted and the deficiencies cannot be cured by amendment.

21 ***a. Statute of Limitations***

22 Plaintiff's claims are barred by the statute of limitations. The statute of
 23 limitations for a claim brought under 42 U.S.C. § 1983 is three years. Wash. Rev.
 24 Code § 4.16.080(2); *Butler v. Nat'l Cnty. Renaissance of Cal.*, 766 F.3d 1191,
 25 1198 (9th Cir. 2014). Plaintiff's claims derive from events that occurred on
 26 January 5, 2018, and this action was filed on April 27, 2023, over five years later.

27 Plaintiff asks that the Court equitably toll the limitations period, claiming he
 28 has pursued his rights diligently, and Defendants engaged in deception that

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1 interfered with his ability to file. Plaintiff's conclusory claims of deception are not
 2 grounded in facts pled in the Complaint or an affidavit, and Plaintiff merely recites
 3 the legal conclusions presented in his Complaint, which do not establish
 4 circumstances that warrant equitable tolling. Therefore, Plaintiff's claims
 5 pertaining to the events of January 5, 2018 are time-barred and dismissed with
 6 prejudice.

7 *b. Judicial and Prosecutorial Immunity*

8 Plaintiff's claims against Defendant Judge Richard Leland are barred by the
 9 doctrine of absolute judicial immunity, and his claims against Defendant Deputy
 10 Prosecutor Alicia Bell are barred by the doctrine of prosecutorial immunity. Judges
 11 and judicial officers are immune to legal actions related to the judicial process,
 12 with only narrow exceptions. *See Forrester v. White*, 484 U.S. 219, 225 (1988).
 13 Relatedly, prosecuting attorneys enjoy qualified immunity associated with the
 14 judicial phase of the criminal process when performing traditional functions of an
 15 advocate. *Torres v. Goddard*, 793 F.3d 1046, 1051 (9th Cir. 2015) (citation
 16 omitted).

17 Plaintiff's claims against Defendants Leland and Bell arise out of criminal
 18 charges filed against him in Spokane County. Defendants acted in their respective
 19 official functions as judicial and prosecutorial officers. Plaintiff did not plead facts
 20 that indicate one of the narrow exceptions to immunity exists. Plaintiff's claims are
 21 barred against these Defendants.

22 *c. Monell Liability*

23 Plaintiff failed to state a plausible claim of an unlawful policy, custom, or
 24 pattern against Defendant Spokane County. A plaintiff may assert a claim for
 25 municipal liability by demonstrating that an official policy, custom, or pattern on
 26 the part of the municipality was the actionable cause of an injury. *Tsao v. Desert*
 27 *Palace, Inc.*, 698 F.3d 1128, 1143 (9th Cir. 2012) (internal quotation omitted). To
 28 bring a claim based on an unconstitutional policy or custom, there must be

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1 sufficient allegations that—among other things—the plaintiff was deprived of a
 2 constitutional right through implementation of a municipality’s policy, which
 3 amounted to deliberate indifference to the plaintiff’s constitutional right. *Mabe v.*
 4 *San Bernardino Cnty., Dep’t of Pub. Soc. Servs.*, 237 F.3d 1101, 1110–11 (9th Cir.
 5 2001).

6 Plaintiff alleges insufficient facts to state a claim for an unconstitutional
 7 custom, practice, or policy. Plaintiff did not articulate facts that present a plausible
 8 claim for a violation of his constitutional rights. Dismissing this action without
 9 leave to amend is appropriate, because it is “absolutely clear that the deficiencies
 10 of the complaint could not be cured by amendment.” *Weilburg v. Shapiro*, 488
 11 F.3d 1202, 1205 (9th Cir. 2007).

12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. Plaintiff’s Motion for Entry of Default, ECF No. 7, and Motion for
 14 Default Judgment, ECF No. 8, are **DENIED**.

15 2. Defendants’ respective Motions to Dismiss, ECF Nos. 10 and 18, are
 16 **GRANTED**.

17 3. The Clerk of Court is directed to **ENTER JUDGMENT** in favor of
 18 Defendants and against Plaintiff, and **CLOSE** the file.

19 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
 20 file this Order and provide copies to counsel and *pro se* Plaintiff.

21 **DATED** this 6th day of July 2023.



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 27 Stanley A. Bastian
 28 Chief United States District Judge

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